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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SHARONETTA THOMAS,

Plaintiff and Appellant,

v.

TEMECULA UNIFIED SCHOOL
DISTRICT,

Defendant and Respondent.

E070426

(Super.Ct.No. MCC1700581)

OPINION

APPEAL from the Superior Court of Riverside County. Raquel A. Marquez,
Judge. Affirmed.

Sharonetta Thomas, in pro. per., for Plaintiff and Appellant.

Walsh & Associates, Dennis J. Walsh and Alicia Chung for Defendant and
Respondent.

Plaintiff and appellant Sharonetta Thomas sued defendant and respondent
Temecula Valley Unified School District (the District) for violating her civil rights by
discriminating against her. The District demurred on the basis of (1) Thomas failing to

state facts sufficient to support her claim; and (2) the District being immune from the claim because the claim was not based upon statutory authority (Gov. Code, § 815). The trial court sustained the demurrer with 20 days leave to amend. Thomas failed to amend her complaint. The District applied ex parte for an order dismissing the complaint. The trial court granted the request and dismissed the case. Thomas contends the trial court erred by sustaining the demurrer because the trial court failed to consider her opposition to the demurrer. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Thomas filed a complaint against the District using a Judicial Council Form entitled “COMPLAINT—Personal Injury, Property Damage, Wrongful Death” (Judicial Council Form PLD-PI-001). In the caption section of the form, in the area for the type of lawsuit, Thomas marked the box next to “Other Damages (specify),” and wrote “Discrimination Civil Rights.” In section 10 of the form, which requires identification of the cause(s) of action, Thomas marked two boxes: (1) “Intentional Tort”; and (2) “Other (specify),” next to which she wrote, “Civil Rights Discrimination.” Thomas did not set forth any facts describing her claim.

The District demurred on November 2, 2017. First, the District asserted that Thomas failed to set forth any factual allegations to support her cause of action. Second, the District contended that Thomas failed to identify the statute upon which she was basing her claim. On December 12, the trial court issued a tentative ruling reflecting the demurrer would be sustained with 20 days leave to amend.

On December 13, Thomas filed an opposition to the demurrer. In the opposition, Thomas explained that she was a student at Chaparral High School. Thomas asserted she suffered medical issues during her senior year of high school that caused her to miss class. Thomas contended the teacher for her government class refused to allow her to submit late assignments and tests, despite her physician-verified medical absence. As a result, Thomas was not permitted to participate in the school's graduation ceremony.

On December 13, the trial court issued a minute order in the case. A reporter's transcript is not included in the record on appeal. The December 13 minute order reads,

"Court's Tentative is indicated / posted.

"There is no request for oral argument.

"Tentative Ruling shall become the Ruling of the Court.

"Demurrer on Complaint of Thomas as to Temecula Valley Unified School District sustained.

"20 days leave to amend.

"Sustain the unopposed Demurrer for failure to state facts sufficient."

Thomas failed to amend her complaint. On April 19, 2018, the District applied ex parte for an order dismissing the complaint. The District asserted good cause existed for granting the application because Thomas failed to amend her complaint within the 20-day period. The trial court granted the application, and ordered the case be dismissed.

DISCUSSION

Thomas contends the trial court erred by failing to consider her opposition to the demurrer. Thomas focuses on the portion of the December 13, 2017, minute order that reads, “SUSTAIN the unopposed Demurrer for failure to state facts sufficient.”

A trial court has discretion to refuse to consider untimely oppositions. (Cal. Rules of Court, rule 3.1300(d).) We apply the abuse of discretion standard of review. (*Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 261-262 (*Rancho*).)

Opposition to a demurrer is due “at least nine court days . . . before the hearing.” (Code Civ. Proc., § 1005, subd. (b).) In Riverside County, in the trial departments that issue tentative rulings, the tentative rulings are issued by 3:00 p.m. on the day before the hearing. (Super. Ct. Riverside County, Local Rules, rule 3316(C).) If, by 4:30 p.m. on the day before the hearing, no party has provided notice of intent to argue, then the tentative ruling becomes the court’s ruling. (Super. Ct. Riverside County, Local Rules, rule 3316(B).)¹

The hearing on the District’s demurrer was scheduled for December 13. The trial court issued a tentative ruling in the case, which means the tentative ruling was issued by 3:00 p.m. on December 12. (Super. Ct. Riverside County, Local Rules, rule 3316(C).) No party provided notice of an intent to argue. Thus, at 4:30 p.m. on

¹ The District requests this court take judicial notice of Superior Court of Riverside County, Local Rules, rule 3316. The request is denied. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9 [“A request for judicial notice of published material is unnecessary”].)

December 12, the trial court's tentative ruling to sustain the demurrer with 20 days leave to amend became the court's ruling. (Super. Ct. Riverside County, Local Rules, rule 3316(B).)

Thomas filed her opposition on December 13. By the time Thomas filed her opposition, the ruling on the demurrer had technically been made, i.e., at 4:30 p.m. on December 12. There is nothing in the record reflecting Thomas attempted to demonstrate good cause for her untimely filing. We see nothing in the demurrer or in a declaration by Thomas acknowledging that her opposition was untimely and attempting to explain why she missed the statutory deadline (Code Civ. Proc., § 1005, subd. (b)).

The minute order from the December 13 proceeding reads, "No appearance made by either party." A reporter's transcript is not included in the record on appeal. Thus, it appears from the record that Thomas did not attend court on December 13 to orally explain why there was good cause for the court to consider her untimely opposition.

Given Thomas's failure to inform the court of any good cause for the trial court to consider her untimely opposition, the trial court acted within its discretion by not considering her opposition. (See *Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker*, *supra*, 2 Cal.App.5th at p. 262 [court acted within its discretion by not considering untimely opposition when there was no attempt to demonstrate good cause].) In sum, the trial court did not err.

Thomas asserts the trial court erred because the December 13 minute order does not reflect that the trial court refused to consider her late filed opposition. California Rules of Court, rule 3.1300(d) provides, "If the court, in its discretion, refuses to

consider a late filed paper, the minutes or order must so indicate.” As explained *ante*, the trial court’s ruling was technically made at 4:30 p.m. on December 12 after no party provided notice of an intent to argue. (Super. Ct. Riverside County, Local Rules, rule 3316(B).) Thomas filed her opposition on December 13. Thus, on December 12, when the trial court’s ruling was made, there was no opposition. As a result, the trial court did not err by not explicitly writing that it refused to consider an opposition that had not been filed at the time the ruling was made. In the alternative, one could interpret the portion of the December 13 minute order that reads, “Sustain the unopposed demurrer,” as indicating that the trial court refused to consider the late filed opposition; thereby reflecting compliance with California Rules of Court, rule 3.1300(d). In sum, we find Thomas’s argument to be unpersuasive.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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MILLER

J.

We concur:

RAMIREZ

P. J.

CODRINGTON

J.